

STATE OF MICHIGAN
COURT OF APPEALS

BRIAN OLRICH,

Plaintiff-Appellant,

v

USHA SARDA RAM, NORTH OAKLAND
MEDICAL CENTER and NORTH OAKLAND
OB/GYN CENTER,

Defendants-Appellees.

UNPUBLISHED

October 28, 2003

No. 240800

Oakland Circuit Court

LC No. 00-024462-NH

Before: Bandstra, P.J., and Hoekstra and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant medical centers' motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff seeks damages for brain injuries allegedly caused by the negligent perinatal treatment rendered by the medical centers and their employees in 1982. The trial court ruled that plaintiff's cause of action accrued in 1983 and defendants were immune from liability under the law as it existed at the time.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion premised on immunity granted by law is properly considered under MCR 2.116(C)(7). "This Court reviews the affidavits, pleadings, and other documentary evidence submitted by the parties and, where appropriate, construes the pleadings in favor of the nonmoving party. A motion brought pursuant to MCR 2.116(C)(7) should be granted only if no factual development could provide a basis for recovery." *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 6-7; 614 NW2d 169 (2000).

At the time plaintiff's cause of action accrued, the governmental immunity statute simply provided that governmental agencies were immune from tort liability when they were engaged in the exercise or discharge of a governmental function. MCL 691.1407. In *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567, 620; 363 NW2d 641 (1984), the Court ruled that "a governmental function is an activity which is expressly or impliedly mandated or authorized by constitution, statute, or other law. When a governmental agency engages in mandated or

authorized activities, it is immune from tort liability unless the activity is proprietary . . . or falls within one of the other statutory exceptions” That ruling applied to governmental agencies operating a public general hospital or medical facility which accrued before July 1, 1986 and filed on or after January 22, 1985. *Hyde v Univ of Michigan Bd of Regents*, 426 Mich 223, 246; 393 NW2d 847 (1986).

Plaintiff’s cause of action accrued in 1983. At that time, the city of Pontiac operated the medical centers pursuant to authority granted by city charter. The authority to operate a hospital impliedly authorizes the authority to provide medical care and treatment and thus defendants were immune from tort liability.

Plaintiff contends that the trial court should not have dismissed his complaint because part of the claim was premised on negligent fetal monitoring which constitutes a ministerial function for which staff members such as nurses may be held liable, and he alleged in general that staff members provided treatment and breached the standard of care. We disagree.

Pursuant to *Ross*, an employee of a governmental agency was immune from tort liability only when he acted during the course of his employment and scope of his authority, acted in good faith, and was performing a discretionary, as opposed to ministerial, act. *Ross, supra* at 633-634. In *O’Neal v Annapolis Hosp*, 183 Mich App 281; 454 NW2d 148 (1989), this Court ruled that the monitoring of fetal heart tones was ministerial in nature and thus the two defendant nurses alleged to have failed to perform the monitoring were not immune from liability. Although plaintiff alleged in general that nurses and other staff members were negligent, he did not name any nurse or other employee as a party defendant apart from Dr. Ram, who has since been dismissed from this action. Therefore, while those unnamed individuals would not be able to claim immunity to the extent that liability was predicated upon their failure to perform, or their negligent performance of, ministerial acts, they are not parties to this suit and not subject to the jurisdiction of the trial court such that they can be held liable for their alleged negligence.

The only defendants subject to the jurisdiction of the trial court are the medical centers. They are immune from liability for their own negligence. While they may be held vicariously liable for the negligence of an employee, such liability may be imposed only if the employee acted during the course of his employment, acted within the scope of his authority, and committed the tort “while engaged in an activity which is nongovernmental or proprietary, or which falls within a statutory exception.” *Ross, supra* at 625. Vicarious liability may not be imposed where the defendants and their employees were engaged in the exercise or discharge of a governmental function. *Id.* at 640-641. The nurses and other employees who provided perinatal care to plaintiff’s mother were presumably acting within the course of their employment as health professionals and within the scope of their authority to treat patients of the facilities. As noted above, the authority to operate a hospital impliedly authorizes the provision of medical care and treatment and thus the nurses and other employees were engaged in the exercise or discharge of a governmental function. Therefore, defendants are not liable for the negligence of their employees.

Affirmed.

/s/ Richard A. Bandstra

/s/ Joel P. Hoekstra

/s/ Stephen L. Borrello